

HOUSE BILL 1063

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Andy Nuñez

AN ACT

RELATING TO MEDICAL MALPRACTICE; RAISING THE LIMITS OF RECOVERY, THE LIMITS OF PERSONAL LIABILITY AND THE MINIMUM INSURANCE REQUIREMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 41-5-5 NMSA 1978 (being Laws 1992, Chapter 33, Section 2) is amended to read:

"41-5-5. QUALIFICATIONS.--

A. To be qualified under the provisions of the Medical Malpractice Act, a health care provider shall:

(1) establish its financial responsibility by filing proof with the superintendent that the health care provider is insured by a policy of malpractice liability insurance issued by an authorized insurer in the amount of at least ~~[two hundred thousand dollars (\$200,000)]~~ four hundred

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1 thousand dollars (\$400,000) per occurrence or for an individual
2 health care provider, excluding hospitals and outpatient health
3 care facilities, by having continuously on deposit the sum of
4 six hundred thousand dollars (\$600,000) in cash with the
5 superintendent or such other like deposit as the superintendent
6 may allow by rule or regulation; provided that in the absence
7 of an additional deposit or policy as required by this
8 subsection, the deposit or policy shall provide coverage for
9 not more than three separate occurrences; and

10 (2) pay the surcharge assessed on health care
11 providers by the superintendent pursuant to Section 41-5-25
12 NMSA 1978.

13 B. For hospitals or outpatient health care
14 facilities electing to be covered under the Medical Malpractice
15 Act, the superintendent shall determine, based on a risk
16 assessment of each hospital or outpatient health care facility,
17 each hospital's or outpatient health care facility's base
18 coverage or deposit and additional charges for the patient's
19 compensation fund. The superintendent shall arrange for an
20 actuarial study, as provided in Section 41-5-25 NMSA 1978.

21 C. A health care provider not qualifying under this
22 section shall not have the benefit of any of the provisions of
23 the Medical Malpractice Act in the event of a malpractice claim
24 against it."

25 Section 2. Section 41-5-6 NMSA 1978 (being Laws 1992,

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1 Chapter 33, Section 4) is amended to read:

2 "41-5-6. LIMITATION OF RECOVERY.--

3 A. Except for punitive damages and medical care and
4 related benefits, the aggregate dollar amount recoverable by
5 all persons for or arising from any injury or death to a
6 patient as a result of malpractice shall not exceed [~~six~~
7 ~~hundred thousand dollars (\$600,000)~~] one million two hundred
8 thousand dollars (\$1,200,000) per occurrence. In jury cases,
9 the jury shall not be given any instructions dealing with this
10 limitation.

11 B. The value of accrued medical care and related
12 benefits shall not be subject to the [~~six hundred thousand~~
13 ~~dollar (\$600,000)~~] one-million-two-hundred-thousand-dollar
14 (\$1,200,000) limitation.

15 C. Monetary damages shall not be awarded for future
16 medical expenses in malpractice claims.

17 D. A health care provider's personal liability is
18 limited to [~~two hundred thousand dollars (\$200,000)~~] four
19 hundred thousand dollars (\$400,000) for monetary damages and
20 medical care and related benefits as provided in Section 41-5-7
21 NMSA 1978. Any amount due from a judgment or settlement in
22 excess of [~~two hundred thousand dollars (\$200,000)~~] four
23 hundred thousand dollars (\$400,000) shall be paid from the
24 patient's compensation fund, as provided in Section 41-5-25
25 NMSA 1978.

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1 E. For the purposes of Subsections A and B of this
2 section, the [~~six hundred thousand dollar (\$600,000)~~] one-
3 million-two-hundred-thousand-dollar (\$1,200,000) aggregate
4 amount recoverable by all persons for or arising from any
5 injury or death to a patient as a result of malpractice shall
6 apply only to malpractice occurring on or after [~~April 1, 1995~~]
7 July 1, 2007."

8 Section 3. Section 41-5-7 NMSA 1978 (being Laws 1992,
9 Chapter 33, Section 5, as amended) is amended to read:

10 "41-5-7. FUTURE MEDICAL EXPENSES.--

11 A. In all malpractice claims where liability is
12 established, the jury shall be given a special interrogatory
13 asking if the patient is in need of future medical care and
14 related benefits. No inquiry shall be made concerning the
15 value of future medical care and related benefits, and evidence
16 relating to the value of future medical care shall not be
17 admissible. In actions upon malpractice claims tried to the
18 court, where liability is found, the court's findings shall
19 include a recitation that the patient is or is not in need of
20 future medical care and related benefits.

21 B. Except as provided in Section 41-5-10 NMSA 1978,
22 once a judgment is entered in favor of a patient who is found
23 to be in need of future medical care and related benefits or a
24 settlement is reached between a patient and health care
25 provider in which the provision of medical care and related

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1 benefits is agreed upon, and continuing as long as medical or
2 surgical attention is reasonably necessary, the patient shall
3 be furnished with all medical care and related benefits
4 directly or indirectly made necessary by the health care
5 provider's malpractice, subject to a semi-private room
6 limitation in the event of hospitalization, unless the patient
7 refuses to allow them to be so furnished.

8 C. Awards of future medical care and related
9 benefits shall not be subject to the [~~six hundred thousand~~
10 ~~dollar (\$600,000)~~] one-million-two-hundred-thousand-dollar
11 (\$1,200,000) limitation imposed in Section 41-5-6 NMSA 1978.

12 D. Payment for medical care and related benefits
13 shall be made as expenses are incurred.

14 E. The health care provider shall be liable for all
15 medical care and related benefit payments until the total
16 payments made by or on behalf of it for monetary damages and
17 medical care and related benefits combined equals [~~two hundred~~
18 ~~thousand dollars (\$200,000)~~] four hundred thousand dollars
19 (\$400,000), after which the payments shall be made by the
20 patient's compensation fund.

21 F. This section shall not be construed to prevent a
22 patient and a health care provider from entering into a
23 settlement agreement whereby medical care and related benefits
24 shall be provided for a limited period of time only or to a
25 limited degree.

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1 G. The court in a supplemental proceeding shall
2 estimate the value of the future medical care and related
3 benefits reasonably due the patient on the basis of evidence
4 presented to it. That figure shall not be included in any
5 award or judgment but shall be included in the record as a
6 separate court finding.

7 H. A judgment of punitive damages against a health
8 care provider shall be the personal liability of the health
9 care provider. Punitive damages shall not be paid from the
10 patient's compensation fund or from the proceeds of the health
11 care provider's insurance contract unless the contract
12 expressly provides coverage. Nothing in Section 41-5-6 NMSA
13 1978 precludes the award of punitive damages to a patient.
14 Nothing in this subsection authorizes the imposition of
15 liability for punitive damages on a derivative basis where that
16 imposition would not be otherwise authorized by law."

17 Section 4. Section 41-5-25 NMSA 1978 (being Laws 1992,
18 Chapter 33, Section 9, as amended) is amended to read:

19 "41-5-25. PATIENT'S COMPENSATION FUND.--

20 A. There is created in the state treasury a
21 "patient's compensation fund" to be collected and received by
22 the superintendent for exclusive use for the purposes stated in
23 the Medical Malpractice Act. The fund and any income from it
24 shall be held in trust, deposited in a segregated account,
25 invested and reinvested by the superintendent with the prior

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1 approval of the state board of finance and shall not become a
2 part of or revert to the general fund of this state. The fund
3 and any income from the fund shall only be expended for the
4 purposes of and to the extent provided in the Medical
5 Malpractice Act. The superintendent shall have the authority
6 to use fund money to purchase insurance for the fund and its
7 obligations. The superintendent, as custodian of the patient's
8 compensation fund, shall be notified by the health care
9 provider or ~~[his]~~ the health care provider's insurer within
10 thirty days of service on the health care provider of a
11 complaint asserting a malpractice claim brought in a court in
12 this state against the health care provider.

13 B. To create the patient's compensation fund, an
14 annual surcharge shall be levied on all health care providers
15 qualifying under Paragraph (1) of Subsection A of Section
16 41-5-5 NMSA 1978 in New Mexico. The surcharge shall be
17 determined by the superintendent based upon sound actuarial
18 principles, using data obtained from New Mexico experience if
19 available. The surcharge shall be collected on the same basis
20 as premiums by each insurer from the health care provider.

21 C. The surcharge with accrued interest shall be due
22 and payable within thirty days after the premiums for
23 malpractice liability insurance have been received by the
24 insurer from the health care provider in New Mexico.

25 D. If the annual premium surcharge is collected but

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1 not paid within the time limit specified in Subsection C of
2 this section, the certificate of authority of the insurer may
3 be suspended until the annual premium surcharge is paid.

4 E. All expenses of collecting, protecting and
5 administering the patient's compensation fund or of purchasing
6 insurance for the fund shall be paid from the fund.

7 F. Claims payable pursuant to Laws 1976, Chapter 2,
8 Section 30 shall be paid in accordance with the payment
9 schedule constructed by the court. If the patient's
10 compensation fund would be exhausted by payment of all claims
11 allowed during a particular calendar year, then the amounts
12 paid to each patient and other parties obtaining judgments
13 shall be prorated, with each such party receiving an amount
14 equal to the percentage [~~his~~] the party's own payment schedule
15 bears to the total of payment schedules outstanding and payable
16 by the fund. Any amounts due and unpaid as a result of such
17 proration shall be paid in the following calendar years.
18 However, payments for medical care and related benefits shall
19 be made before any payment made under Laws 1976, Chapter 2,
20 Section 30.

21 G. Upon receipt of one of the proofs of
22 authenticity listed in this subsection, reflecting a judgment
23 for damages rendered pursuant to the Medical Malpractice Act,
24 the superintendent shall issue or have issued warrants in
25 accordance with the payment schedule constructed by the court

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1 and made a part of its final judgment. The only claim against
2 the patient's compensation fund shall be a voucher or other
3 appropriate request by the superintendent after ~~he~~ the
4 superintendent receives:

5 (1) a certified copy of a final judgment in
6 excess of [~~two hundred thousand dollars (\$200,000)~~] four
7 hundred thousand dollars (\$400,000) against a health care
8 provider;

9 (2) a certified copy of a court-approved
10 settlement or certification of settlement made prior to
11 initiating suit, signed by both parties, in excess of [~~two~~
12 ~~hundred thousand dollars (\$200,000)~~] four hundred thousand
13 dollars (\$400,000) against a health care provider; or

14 (3) a certified copy of a final judgment less
15 than [~~two hundred thousand dollars (\$200,000)~~] four hundred
16 thousand dollars (\$400,000) and an affidavit of a health care
17 provider or its insurer attesting that payments made pursuant
18 to Subsection E of Section 41-5-7 NMSA 1978, combined with the
19 monetary recovery, exceed [~~two hundred thousand dollars~~
20 ~~(\$200,000)~~] four hundred thousand dollars (\$400,000).

21 H. The superintendent shall contract for an
22 independent actuarial study of the patient's compensation fund
23 to be performed not less than once every two years."

24 Section 5. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2007.

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